

No. 10965

United States
Circuit Court of Appeals
For the Ninth Circuit.

MABEL HELEN LOWERY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

APR 23 1945

PAUL P. O'BRIEN,
CLERK

No. 10965

United States
Circuit Court of Appeals
For the Ninth Circuit.

MABEL HELEN LOWERY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Appeal:

Certificate of Clerk to Transcript of Record on (DC)	15
Notice of	11
Order Fixing Bond on	13
Praecipe for Transcript of Record on....	14
Statement of Points and Designation of Record on (CCA)	49
Arraignment and Plea	7
Assignment of Error	47
Bill of Exceptions	17

Witnesses for Defendant:

Kadaner, B. A.	
—direct	39
Lowery, Mabel Helen	
—direct	40
—cross	43

Witnesses for Plaintiff:

Bangs, A. M.	
—direct	26
—cross	29
—rebuttal, direct	45

Index	Page
Witnesses for Plaintiff—(Continued)	
Graben, Walter	
—direct	34
Hogan, Elizabeth	
—direct	38
Hyde, George S.	
—direct	29
—cross	32
—redirect	33
—recross	33
—rebuttal, direct	45
Ringstrom, Hugh	
—direct	17
—cross	18
Van Treel, John H.	
—direct	34
—cross	37
Wing, Mar Gim	
—direct	25
—cross	21
—redirect	25
—recross	25
Certificate of Clerk to Transcript of Record on Appeal (DC)	15
Indictment	2
Judgment and Sentence	10

Index	Page
Motion for New Trial	8
Motion in Arrest of Judgment	9
Names and Addresses of Counsel of Record...	1
Notice of Appeal	11
Order Fixing Bond on Appeal	13
Præcipe for Transcript of Record on Appeal	14
Statement of Points and Designation of Record on Appeal (CCA)	49
Verdict	7

NAMES AND ADDRESSES OF COUNSEL

Attorney for Appellant:

HENRY CLAY AGNEW

1103 Smith Tower
Seattle 4, Washington

Attorney for Appellee:

J. CHARLES DENNIS

United States Attorney
1017 United States Court House
Seattle, Washington [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

United States District Court
Western District of Washington
Northern Division

May Term, 1944

No. 46512

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MABEL HELEN LOWERY, alias May Lowery,
alias Mabel Cheney,

Defendant

INDICTMENT

Vio. Sec. 2553a Internal Revenue Code and Sec.
174, Title 21, U.S.C.A.

United States of America
Western District of Washington
Northern Division—ss.

The grand jurors of the United States of America
being duly selected, impaneled, sworn, and charged
to inquire within and for the Northern Division of
the Western District of Washington, upon their
oaths present: [2]

COUNT I.

(2553a I.R.C. — Sale)

That Mabel Helen Lowery, alias May Lowery,
alias Mabel Cheney, on the 5th day of May, in the
year of Our Lord One Thousand Nine Hundred
Forty-four, at the City of Seattle, in the Northern

Division of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, wilfully, unlawfully, and feloniously sell, dispense and distribute a certain derivative and preparation of Opium, to wit: Twenty-five (25) grains of Opium Prepared For Smoking, which said preparation of opium was not then and there in nor from the original stamped package containing said preparation of opium, to wit: Opium Prepared For Smoking; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [3]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT II.

(2553a I.R.C. — Sale)

That Mabel Helen Lowery, alias May Lowery, alias Mabel Cheney, on the 8th day of May, in the year of Our Lord One Thousand Nine Hundred Forty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, wilfully, unlawfully, and feloniously sell, dispense and distribute a certain derivative and preparation of Opium, to wit: Three Hundred (300) grains of Opium Prepared For Smoking, which said preparation of opium was not then and there in nor from the original stamped package containing said prep-

aration of opium, to wit: Opium Prepared For Smoking; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [4]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT III.

(2553a I. R. C. — Possession)

That Mabel Helen Lowery, alias May Lowery, alias Mabel Cheney, on the 9th day of September, in the year of Our Lord One Thousand Nine Hundred Forty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, willfully, unlawfully, and feloniously, and not in the original stamped package, nor from the original stamped package, purchase from a person whose name is to the grand jurors unknown, a quantity, to wit: Four Hundred (400) grains of a certain compound, manufacture, salt, derivative, and preparation of Opium, to wit: Opium Prepared For Smoking; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [5]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT IV.

(2553a I. R. C. — Possession)

That Mabel Helen Lowery, alias May Lowery, alias Mabel Cheney, on the 9th day of September, in the year of Our Lord One Thousand Nine Hundred Forty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, then and there being, did then and there knowingly, willfully, unlawfully, and feloniously, and not in the original stamped package, nor from the original stamped package, purchase from a person whose name is to the grand jurors unknown, a quantity, to wit: Ten (10) grains of a certain compound, manufacture, salt, derivative, and preparation of Opium, to wit: Opium Prepared For Smoking; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [6]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT V.

(174 - 21)

That Mabel Helen Lowery, alias May Lowery, alias Mabel Cheney, hereinafter called the defendant, to wit: On or about the 9th day of September, 1944, at the City of Seattle, County of King, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Honor-

able Court, then and there being, did then and there violate the Act of February 9, 1909, as amended by the Act of May 26, 1922, in that he, the said defendant, did then and there willfully, unlawfully, knowingly, feloniously and fraudulently receive, conceal, buy, sell and facilitate the transportation and concealment after importation of a certain derivative and preparation of Opium, to wit: Four Hundred Ten (410) grains of Opium Prepared For Smoking, which said preparation of opium, as the defendant then and there well knew had been imported into the United States contrary to law.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the United States of America in such case made and provided.

J. CHARLES DENNIS

United States Attorney.

ALLAN POMEROY

Assistant United States

Attorney [7]

[Endorsed: A true bill, Frank W. McDermott, Foreman. J. Charles Dennis, United States Attorney.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and Filed in the U. S. District Court, Oct. 25, 1944. Judson W. Shorett, Clerk, By Lee L. Bruff, Deputy. [8]

[Title of District Court and Cause.]

ARRAIGNMENT AND PLEA

Now on this 3rd day of November, 1944, Allan Pomeroy, Assistant United States Attorney appearing for the plaintiff and attorney Henry Clay Agnew appearing for the defendant this cause comes on before the Court for arraignment and entry of plea of the defendant, Mabel Helen Lowery, alias May Lowery, alias Mabel Cheney. At this time the defendant states her true name to be Mabel Helen Lowery. Reading of the Indictment is waived and the defendant now enters a plea of Not Guilty on all counts as charged in the Indictment. Order is entered directing the Clerk to place the case on the Call Calendar for assignment for trial, November 7, 1944 at 10 A.M.

Journal Volume 34, Page 8 [9]

[Title of District Court and Cause.]

VERDICT

We, The Jury In The Above-Entitled Cause,
Find the defendant Mabel Helen Lowery

Not guilty on Count I of the Indictment as
charged; and further find the defendant Mabel
Helen Lowery

Not guilty on Count II of the Indictment as
charged; and further find the defendant Mabel
Helen Lowery

Not guilty on Count III of the Indictment as charged; and further find the defendant Mabel Helen Lowery

Is guilty on Count IV of the Indictment as charged; and further find the defendant Mabel Helen Lowery

Not guilty on Count V of the Indictment as charged.

HAROLD W. BOYD

Foreman

[Endorsed]: Filed Dec. 20, 1944. [10]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now defendant and moves for a new trial for the following reasons:

1. That the verdict was contrary to the evidence;
2. Errors of law occurring at the trial and excepted to by the defendant;
3. That the powder case seized from defendant's purse was taken from the defendant according to the undisputed proof in violation of her constitutional rights against unreasonable searches and seizures.
4. That defendant did not have a fair and impartial trial as to the issues of count four by reason

of the submissions to the jury of the evidence relative to the remaining counts.

HENRY CLAY AGNEW

Attorney for Defendant

[Endorsed]: Filed Dec. 23, 1944. [11]

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

Comes now the defendant and moves for an arrest of judgment herein for the following reasons:

1. That the verdict was contrary to the evidence and that none of the evidence legally obtained supported said verdict and that it appeared from the conceded testimony that the evidence upon which the conviction rested as to Count Four was seized in violation of the constitutional rights of the defendant.

HENRY CLAY AGNEW

Attorney for Defendant

[Endorsed]: Filed Dec. 23, 1944. [12]

United States District Court
Western District of Washington
Northern Division

No. 46512

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MABEL HELEN LOWERY, alias May Lowery,
alias Mabel Cheney,

Defendant.

JUDGMENT AND SENTENCE

Comès now on this 3rd day of January, 1945, the said defendant Mabel Helen Lowery, with Henry Clay Agnew, her attorney, into open Court for sentence, and being informed by the Court of the charges herein against her and of her conviction of record herein, she is asked whether she has any legal cause to show why sentence should not be passed and judgment had against her, and she nothing says, save as she before hath said.

Wherefore, by reason of the law and the premises, and the verdict of the jury finding the defendant guilty on Count IV of the Indictment, it is

Considered, Ordered and Adjudged by the Court that the said defendant Mabel Helen Lowery, is guilty as charged in Count IV of the Indictment and that she be committed to the custody of the Attorney General of the United States for imprisonment in the Federal Reformatory For Women,

at Alderson, West Virginia or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Eighteen (18) months.

[13]

And the said defendant is hereby remanded into the custody of the United States Marshal for this District for delivery to the Warden of The Federal Reformatory For Women at Alderson, West Virginia, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden or Keeper of any Federal Penal Institution as such.

Done In Open Court this 3rd day of January, 1945.

JOHN C. BOWEN

United States District Judge

Presented by:

ALLAN POMEROY

Asst. United States Attorney

Violation of Section 2553a Internal Revenue Code, and Section 174, Title 21, U.S.C.A. (Sale and Possession of Narcotics)

[Endorsed]: Filed Jan. 3, 1945. [14]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Mabel Lowery
—727-28th South, Seattle, Washington.

Name and address of appellant's attorney: Henry Clay Agnew—1103 Smith Tower, Seattle, Washington.

Offense: Violation of Sec. 2553a Internal Revenue Code.

Date of Judgment: January 3, 1945.

Brief Description of Judgment or Sentence: Guilty of Count IV of the Indictment.

Sentence: Defendant sentenced on Count IV of the Indictment Custody of the Attorney General for confinement Alderson, West Va. for eighteen months.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

MABEL LOWERY,

Appellant

1-3-45

By HENRY CLAY AGNEW

Her attorney

Grounds for Appeal: That the record affirmatively shows that a manifest injustice was done the defendant in that whatever evidence [15] tending towards proof of guilt as to Count IV was seized in violation of her constitutional rights and that knowledge of the true facts was concealed from the defendant by the acts of Federal Officers in showing false evidence for the purpose of deceiving the defendant. Error of the court in failing to grant a directed verdict as to Count IV. That defendant

did not have a fair trial by reason of the Court's admitting Counts III and V.

HENRY CLAY AGNEW

Attorney for Appellant

[Endorsed]: Filed Jan. 3, 1945. [16]

[Title of District Court and Cause.]

ORDER FIXING BOND ON APPEAL

This cause having come regularly before the court after verdict of guilty properly received and filed herein as to Count IV of the Indictment; and the court having considered the Motion in Arrest of Judgment and Motion for New Trial and the same having been denied by the court; and the court having thereupon by judgment found the defendant guilty as to said Count and sentenced the defendant in accordance with the terms of the Judgment and sentence as they appear on file herein; and the defendant having regularly filed her Notice of Appeal from such judgment and sentence;

It Is Ordered that defendant be and she is hereby allowed release upon bond pending appeal and that said bond be and the same is hereby fixed in the sum of \$3000.00 and to be in a form approved by the court.

Done In Open Court this 3d day of January,
1945.

JOHN C. BOWEN

Judge

Presented by:

HENRY CLAY AGNEW

Attorney for Defendant

[Endorsed]: Filed Jan. 3, 1945. [17]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL

To The Clerk Of The Above Entitled Court:

It is requested that you prepare and certify a copy of the following documents and proceedings of record in your court, which said documents and records are necessary to a determination of the above case in the Appellate Court:

- 1: Indictment,
- 2: Arraignment,
- 3: Plea,
- 4: Verdict,
- 5: Notice of Appeal,
- 6: Motion for new trial,
- 7: Motion for arrest of judgment,
- 8: Order fixing bond on appeal,
- 9: Assignment of Errors,

10: Bill of Exceptions,

11: This praecipe

HENRY CLAY AGNEW

Attorney for Defendant.

[Endorsed]: Filed Feb. 20, 1945. [18]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,

Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 18, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same, together with the original Bill of Exceptions and Assignment of Error, sent up as part hereof, constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit: [9]

Clerk's fees (Act of Feb. 11, 1925) for making record, certificate or return:

1 folios at 5c	\$.05
30 folios at 15c	\$ 4.50
Appeal fee (Section 5 of Act)	\$ 5.00
Certificate of Clerk to Record on Appeal	\$.50

Total \$10.05

I hereby certify that the above amount has been paid to me by the attorney for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 27th day of February, 1945.

[Seal]

MILLARD P. THOMAS,

Clerk,

By SIGFRIED HENDRICKSON

Deputy [20]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS.

Be It Remembered that heretofore and on to-wit: December 19, 1944, at the hour of 10:00 A.M., the above-entitled cause came regularly on for trial in the above court before the Honorable John C. Bowen, Judge of said Court;

Plaintiff appearing by Allan Pomeroy, Assistant United States District Attorney;

Defendant appearing by Henry Clay Agnew, Esq., her attorney and counsel;

Whereupon the following proceedings were had:

[1*]

(Whereupon, counsel for the Plaintiff made his opening statement to the jury; counsel for the Defendant reserving his opening statement.)

HUGH RINGSTROM,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination

My name is Hugo Ringstrom. I am a chemist for the Alcohol Tax Unit. I do work regularly for the Treasury Department of the United States since 1923.

Plaintiff's Exhibit 1 contains 25 grains of smoking opium which I have tested. I received it from agent Van Treel, on May 6, 1944, and I have had it in my possession ever since.

*Page numbering appearing at foot of page of original Bill of Exceptions.

(Testimony of Hugh Ringstrom.)

Government Exhibit 2 contains 300 grains of smoking opium which I received from Agent Van Treel on May 10, 1944, and I analyzed it.

Plaintiff's Exhibit 3 contains approximately 250 grains of smoking opium which I examined and received from Agent Van Treel on September 14, 1944, and have had in my possession ever since.

Plaintiff's exhibit 4 is a powder puff containing a bindle of smoking opium of 8 grains. I received it from Agent Van Treel September 14, 1944, and have had it in my possession ever since.

Cross Examination

Exhibit 4 is in the form of one large pill with considerable small fine stuff that has broken off.

MAR GIM WING,

called as a witness on behalf of the Plaintiff, being first duly sworn testified as follows:

Direct Examination [2]

My name is Mar Gin Wing. I usually go by the name of Harry Mar. I will be thirty-six years old in February. For the past two years I have been mining. I also drove a cab in Seattle. I did own a cab company. I was born in Seattle and have lived here practically all my life. I am an American citizen. I know Mabel Lowery and have for about three years. I have been charged in this court and pleaded guilty to possession of opium, but have not

(Testimony of Mar Gim Wing.)

been sentenced yet. I saw Mabel Lowery on September 9. It was the same day I was arrested by the Narcotic Officers at 7th and King in Seattle. I had just left the cab office and had opium in my possession. It was a 50 fun jar. The officers took me to the Federal Building. I gave them the jar. After I came to the Narcotic Office with the officers I telephoned Mabel Lowery. Officer Van Treel was listening on the 'phone. She told me she had been waiting quite a while for me, and I told her I was not able to obtain a cab, and she told me she was waiting, and I told her I would be up. She says "you bring it up to me" and I told her I did not have a car but I would try to get a friend's car. That was about the extent of the conversation. I had seen her three days before at her home. She ordered a cab and I took her down town. She said she was ill and if possible to find a place and get her some. She asked me the price and I said approximately a hundred or one hundred twenty-five. I don't know exactly what the 50 fun jar means. It refers to the contents, which is a measurement of weight. Prior to this time I had not seen Mabel Lowery for two or three months. After the telephone conversation with Mabel Lowery from the Narcotic Office I went to the garage with Mr. Bangs, who is a Narcotic Officer. Officers Van Treel and Mr. Hyde went along. This was at 8th and Weller. [3] I went with Mr. Bangs and Van Treel and Hyde went in their car. After we got there Mr. Bangs got out of the car and went behind

(Testimony of Mar Gim Wing.)

a garage. I went with him. The other officers were in the car right along side. Then Mr. Bangs released me from his custody and I proceeded to the house of Mabel Lowery. Mr. Bangs had the opium. It was behind the garage. He put it right along side of him, I guess. Then I went in the car alone. I was followed by officer Van Treel in the other car. I saw Mabel Lowery at her home. Her dog was ill and she wished me to take her to the veterinary, which I did. I told her I had put the opium away. She did not say any more, so we proceeded. We were at the veterinary's fifteen minutes or so. I went in with her. Then we went to 8th and Weller. We both got out of the car, she with the dog. I went directly behind the garage and Mr. Bangs gave me the opium and I returned to the car. I gave it to Mrs. Lowery. She did not give me the money at the time. She said she would pay me at the hotel, that is the Albany Hotel at 3rd and Madison. I understand she manages it. We did not go far. We were stopped by Officer Van Treel. They got the opium from the car, on the right hand side. It was placed there by Mrs. Lowery. It had been in her purse. She placed it there in the car after we stopped, when the policeman arrested us. She said "who are these people?" I said I did not know. Exhibit 3 looks like the opium jar that I gave Mrs. Lowery. I do not recognize Exhibit 4.

(Testimony of Mar Gim Wing.)

Cross Examination

I am not an addict but I have smoked it.

A. Mr. Agnew, I have only given to people at their request. I have never encouraged the sales.

Q. I didn't hear that. Haven you been selling narcotics for several years?

A. Not several years. [4]

Q. How many years? A. On and off.

Q. How many years have you been peddling?

A. I have never peddled.

Q. What is that?

A. I have never peddled.

Q. Well, we will call it selling, then.

A. That is right, sir.

Q. How many years have you been selling narcotics? A. For the last two years.

I was arrested around noon. I believe around 2 o'clock, at 7th and King near the taxi cab office. I do not own the cab company or have any interest in it. Mabel Lowery's home is on 28th South, about five or six blocks south of Jackson Street. Her hotel is the Albany Hotel on 3rd Avenue, near Marion. I have often taken her from her home to the hotel. Prior to my arrest she *she* had not called and asked me for a cab. That was not the conversation. She did have a sick dog to take to the veterinary. When I was arrested I had the narcotics in my right hand pocket. I had a check protector that I was taking to my sister's store. At the time I was arrested I was trying to keep this appointment. When I did keep this appointment it

(Testimony of Mar Gim Wing.)

was around 4:00 o'clock or so. In the intervening two hours I was in the United States Narcotic Office in the Federal Building. I voluntarily gave them the narcotics before I entered the building. They later searched my pockets. Officer Van Treel searched me. I knew Mrs. Lowery to be a user and an addict. I did not tell that to the Federal Officers. I did not have any car. They just gave me a car. They confiscated the cab after my arraignment. The car I used to go to Mabel Lowery's was given to me by the Federal Narcotic Officers. They did not tell me whose car it was. I didn't notice any license number on it. [5] I had no control about whether I should drive up to the house and sell her the drug up there. That was my own suggestion that I stop somewhere and leave the narcotics. That was my own idea. As I have said I refrain from all opinions on Miss Lowery.

Q. (Mr. Agnew): Isn't there any explanation of your reason why you didn't want to go right to May Lowery's house and sell her the narcotics up there? Why did you want to stop and hide the narcotics behind a garage?

A. Mr. Agnew, I just want to clarify my own conscience on what has happened.

Q. Your what?

A. My own conscience of what has happened.

The Court: "I want to clarify my own conscience as to what happened." You may speak.

The Witness: That is all I have to say on that.

Q. (Mr. Agnew): The question was, why did

(Testimony of Mar Gim Wing.)

you suggest to the Federal Officers that you stop and hide the drug somewhere instead of taking it right up to her house? What was the reason? That has nothing to do with your conscience, has it?

A. It has.

Q. Well, does your conscience say that you don't want to answer the question? Is that it?

A. That is right.

Q. You don't want to answer the question?

A. That is right.

When I left the Federal Court House Mr. Bangs was carrying the opium. Mr. Bangs released me at the garage but Mr. Van Treel followed me out to Mrs. Lowery's house. Mr. Bangs kept the opium. It was placed by an unoccupied building. To me it seemed like it was only a deserted shack. The building was my suggestion. From there it would be approximately a mile and a half to Mrs. Lowery's home. [6]

By arrangements with the Government Officers I was supposed to go back and pick up the narcotics. I took her to the veterinary first at Rainier and Dearborn. We were there fifteen minutes. I was in the same room with Mrs. Lowery at all times. I did not stay in the front office with her purse at any time. I raised no objection to her going to the veterinary. When we came to 8th and Weller I was driving. It was a sedan. Mrs. Lowery was in the front seat with me. She was holding the dog. I didn't notice that the dog threw up. When I stopped she did follow out after the dog.

(Testimony of Mar Gim Wing.)

I went behind the building. Mr. Bangs was there. I picked up the narcotics in his presence. He had told me to do that. All I have done is of my own volition. They have not guaranteed me anything. Nothing has been said to me about probation. When I plead guilty I asked for two weeks to settle my business.

When I got back from the garage she was already back in the car, or just getting into the car. I got into the car and gave the jar to Mrs. Lowery. She was sitting in the front seat. I gave it to her before the car started. The officers found it on the front seat between the driver and the passenger. I don't know which side. I know it was on her side of the car but where I don't know. I pleaded guilty to possession of this same jar. I did not admit several hundred sales to the Federal Officers. I admitted approximately five or six. I have not been working for them while out on bail. At the time I handed the jar to Mrs. Lowery I had closed the door of the car. We both sat in the front seat. I just handed it to her. She put it in her purse. I am not sure whether the dog was throwing up at the time. I did not notice that she was covered with anything from the dog. I would not consider that a poor time to carry out such a transaction. I don't remember any conversation whether or not she demanded that the police officers take finger prints on the jug. We were in [7] a different room after that. The man I got the jar from is not here now. I didn't ship it in. I don't know anything

(Testimony of Mar Gim Wing.)

about shipping it in. I have never had any profit from Mrs. Lowery. I do not buy any jars, only at the time she wanted. I told her this car belonged to a friend of mine. I had previously called her and told her that I could not get a cab but that I had a friend's car and would come up and get the dog and the stuff for her. When I talked in the presence of the Federal Officers I said "I have got it now." I didn't say "opium."

Redirect Examination

I never say "opium" over the telephone. I usually say "it." Not very many of my sales were made to Mabel Lowery, about three. I have never been employed by the Narcotic Bureau or received money from them. I have not received promises of what recommendation they will make to the court. At the time I handed her the jar she just took it and looked at it. I don't recall that she took the top off. She told me she would pay me at the hotel. She put it in her purse; then she took it out of her purse and put it along side of where she was sitting.

Recross Examination

I have made no other sales except to Vivian. I did not tell them all the sales I had made. I have not made any. I have received no promises in any way. Nothing was promised me.

A. M. BANGS

called as a witness by and on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is A. M. Bangs. I am at present District Supervisor of the Bureau of Narcotics, stationed at Denver, Colorado. In September of this year I was District Supervisor stationed in Seattle. On September 9th I saw Harry Mar in my office on the third floor of this building. It was about 2:00 o'clock or a little later. He had been apprehended at that time by officers working for me. When he was arrested he had a jar of opium [8] in his possession. Exhibit 3 is the jar. I identify it from a mark that agent Van Treel put on it in my presence. I was present and heard Harry Mar's conversation over the telephone. He dialed a number and said "hello, Mabel. This is Henry Mar" or "this is Henry." He might have said "Harry." He said "I have got that but I can't get a taxi and I can't get out to your place right away on account of the gasoline shortage," or something, "I can't get a taxi cab but maybe I can borrow a car from a friend and come out to your house, but I don't want to carry it in the car. I will put it somewhere—I have got it somewhere and I will go and get it—I will come out and get you, and then we will come down and I will give it to you." That is substantially the conversation. I went with Harry Mar to 9th and Weller accompanied by Van Treel and Detective Lieutenant George Hyde. We parked our car there and I saw that Agent Van Treel and

(Testimony of A. M. Bangs.)

Mr. Hyde were right behind us. Mar and I went over to the opposite corner, and there was an old frame shack standing there. We went in behind that and I placed the jar on the ground, and told him "Now, here it is. It will be here when you come back." He left and I stayed with the jar. Van Treels followed him. He stayed a little way down the street on the other side. I did not plan this. Harry Mar planned it himself to a certain extent.

In about a half hour or a little better, Mar returned in the car, and I could look out from behind the building and see that Mabel Lowery was in the car with him. He came across to me and picked up the jar and went back to the car. She got out and stood outside the door on the curb. At that time I didn't see any dog. When he came across the street towards the car she got in on her side and he got in on the driver's side, which was towards me. Then they pulled away from the curb in a very short time and started south, and I saw Van Treel come in behind them and cut in front of them, and then I went down there, and [9] Van Treel and Hyde and placed the two people under arrest. I saw Van Treel reach down between the door and the seat and pick up this jar of opium. It was on the right hand side towards where Mabel Lowery was sitting. Mabel Lowery seemed very much surprised. We did not talk very much there. We got in our cars and went down to the building here and we went up to my office, and I had a brief conversation with

(Testimony of A. M. Bangs.)

her up there. Mr. Van Treel was present. I recognize Exhibit 4. It was found in her pocket book. The first time I saw it it was in my office. Van Treel pulled it out of her purse. As I recall it, it is three opium pills wrapped in cellophane paper. She denied know anything about them, that they were hers. She denied knowledge or ownership of it. She did not know anything about it or how it got in there. I asked her about the dog. She told me that he had been sick. I asked her what sort of treatment the veterinary had administered to the dog. She told me and pointed to her dress, and there was some matter on there, at least she said it had been expectorated by the dog. She denied knowing anything about the jar of opium. She told me she had known Harry Mar for some time and had been using his taxi cab off and on. She said the jar was not hers. She did not know anything about it. There was \$125 in her purse.

(Whereupon by stipulation of counsel made in Open Court Exhibit 5 was received in evidence, Exhibit 5 stating in substance as follows:)

“Received of Federal Narcotic Office, Seattle, Washington, the sum of \$125, the property of Mabel Lowery, it being understood that this receipt may be used in evidence, having the same force and effect as if the same funds took from her at the time of her arrest were introduced.”

(Testimony of A. M. Bangs.)

Cross Examination

I first saw the jar of opium after Harry Mar's arrest. When I placed it by the old building I kept my eye on it. [10] I don't recall what I said to Harry Mar when he came after it. I was out of sight of the street. It was his suggestion that it was carried on in this way. It was discussed in my office between Mar, Van Treel, Mr. Hyde and myself. We discussed it as to the various ways that it should be done and then most of the suggestions came from Mar himself as to the method of accomplishing it. I was in charge of the office. I understood that these narcotics were to be taken out and delivered to her in pursuance of a previous arrangement and understanding between them. I approved of this. I cannot answer "yes" or "no" as to whether or not she was an addict at this time. The last time I talked to her she absolutely denied using anything, and that wasn't very long before that. She looked to me like she might be at least temporarily abstaining. I did not search Harry Mar thoroughly.

GEORGE S. HYDE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is George S. Hyde. I am a Detective Lieutenant, Seattle Police Department. On September 9th I was working in cooperation with the

(Testimony of George S. Hyde.)

U. S. Bureau of Narcotics. I saw Harry Mar on that day walking across the street entering a taxicab. There were three other passengers in the cab. Mr. Van Treel, Federal Narcotic Agent, was with me. I asked him to walk up the block and sit in the car with us as we wanted to talk to him. He did and then we took him to the Federal Bureau of Narcotics' office in the Federal Court house. He had a jar of opium on his person, which he gave me in front of the Federal Court House Building. He had it in his right hand pants pocket. Exhibit 3 is the same jar. I was present when he had the phone conversation with Mabel Lowery. Mr. Van Treel was listening on the extension, and I believe also Mr. Bangs. I couldn't hear Mabel [11] Lowery but I could hear Harry Mar. He told her that he was coming up, or told her that he had something for her, and then there was some discussion about—he said he couldn't get a taxicab, he wasn't driving a cab, and he said he thought he could get a friend's car and that he would be up as soon as he could. After that we went to a garage on 9th and Weller. Mr. Van Treel and I went in one car and Mr. Bangs and Mar in the other. Mr. Bangs and Mar went behind a shed on the Southeast corner of 9th and Weller to place this jar of opium. Then Mar got back in one of the cars and drove away. Mr. Van Treel followed him and I stationed myself at a point on Weller Street between Eight and Ninth, on the north side of the street. Bangs remained behind the shed. About a half hour later

(Testimony of George S. Hyde.)

Mar came back. Mrs. Lowery was with him. Mar got out of the car and went across the street and back of the shed, and then I perceived him coming from the shed back again towards the car, and he got into the car. I didn't see whether or not Mabel Lowery got out of the car. After Mar got back in the car, in a few moments, he started driving towards where I was standing, and when they got about even with me, or a little past where I was standing, Mr. Van Treel came along in another car and turned them into the curb; and as they stopped I opened the car door on the right side of the car. Mrs. Lowery was sitting there. I seized Exhibit 3 immediately on opening the door. It was right along side of her, between her person and the car door, sort of in the ledge where the seat fits into the car. It was not between the driver and Mabel Lowery. It was between her and the door. She had a dog in her arms. Her purse was on her lap. It was closed. I first saw exhibit 4 in room 311, the Narcotics Office where Mr. Van Treel searched Mabel Lowery's purse. I did not look in it. I was [12] standing there. He found opium pills. We call them yen pocks. Mrs. Lowery had vomit all over her clothes from the dog. I could not say exactly how much was there but the dog had vomited on her, and she said that it had been sick after she had brought it out from the veterinary, that the veterinary had evidently given it something and that the dog had vomited on her. It looked more or less like it had been rubbed off. I cannot

(Testimony of George S. Hyde.)

say positively whether or not it had been on a few minutes or so because I didn't pay much attention to that. I am just giving my own opinion. It did look like it had been done possibly some minutes previously. It looked like it had been wiped off.

I said "Hello, Mabel," and she said, "Hello, Mr. Hyde," and I said "what are you doing with this?" and she said, "I don't know anything about it. It isn't mine." There was nothing else said at the time. She just wanted to know what it was all about, and then Mr. Bangs came down and she said she had some clothes in the car and could she take the clothes, so we transferred all the stuff from this car into another car, and she was worried about the dog, and they assured her that they would take care of the dog, and we told her that she was under arrest. She did not say anything to me about taking finger prints. Harry Mar suggested placing the jar behind the building at 8th and Weller. The Narcotic Officer said to him "you make the suggestions."

Cross Examination

No suggestion was made to Harry Mar by the Narcotic Officer that he would be better off if he helped the department out a little bit. He was given the opportunity to make a delivery in his own way. There was no promises or anything like that made in regards to his own status. He was told that he would be given an opportunity to go through with it if he wanted to. He was quite willing to go through with it. Nobody told him it

(Testimony of George S. Hyde.)

would be a good idea. There might have been something said along the [13] the lines of helping himself. The jar was wrapped up when it was in the car. I did not make tests for finger prints. I am not a finger print expert. Fingerprints could be obtained off glass or that kind of substance if they had been really pressed on there, although glass of this type can easily be smudged, and sometimes fingerprints aren't easily distinguishable. When we arrested Harry Mar there were three, or possibly four men in the car. They were Chinese. The cab had a driver. They were waiting for him and he was starting to get in. They must have seen him coming down the street. I don't know whether they were waiting for him or not. The cab opened the door for him. I called him before he had a chance to get in. If he was going up to Mabel Lowery's to sell her some opium he gave no explanation for why he had the three or four Chinese along.

Redirect Examination

After we arrived at the Federal Building with Mabel Lowery, when we got out of the car I was in possession of her purse. She asked me if she could have Exhibit 4. At that time it was inside her purse. I told her she could not get it then but she might get it later. Mr. Van Treel found the pills in the powder puff in my presence.

Recross Examination

I would say it was about fifteen minutes later that he found them. Mrs. Lowery was not left

(Testimony of George S. Hyde.)

alone with her purse at any time. She did ask me for some personal letters in the purse and she asked me for the powder puff. It would be the universal custom of an officer to search anything before giving it back to the defendant.

WALTER GRABEN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: [14]

(This witness gave testimony entirely confined to two counts of the indictment upon which the defendant was acquitted. None of said testimony, directly or indirectly, concerns counts 3, 4 and 5.)

JOHN H. VAN TREEL

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

(The testimony of this witness relative to counts 1 and 2 upon which defendant was acquitted is not set forth in this Bill of Particulars for the reason that it in no way, directly or indirectly, concerns counts 3, 4, 5 or the exceptions taken by the appellant.)

I am a Narcotic Agent and have been for twenty years. I saw Harry Mar in September of this year at 7th and King Street in Seattle. I was with

(Testimony of John H. Van Treel.)

Lieutenant Hyde and we took Harry Mar from 7th and King towards the United States Court House. I told Harry Mar that if he had anything to say, the truth would always be appreciated. We brought him to the office of the Bureau of Narcotics in Room 311 in this building. Exhibit 3 was handed to Lieutenant Hyde by Harry Mar in my presence just outside of this building. After we came to the building Harry Mar called Mabel Lowery on the telephone. I listened on the extension in the next office.

He said, "Hello, Mabel. This is Harry."

Mabel said, "Where have you been? Where are you?" She said "where have you been?"

"Well, I am downtown." She said, "Have you got that stuff?" He says, "Yes."

"Well, come on out." He said, "I can't get a cab." He said, "I have been trying to get a cab for the last hour. I can't get any cab."

"Well, bring it out and I will go downtown with you." She says, "Come right on out to the house. I am ready." He says, [15] "Well, I haven't got a car. Maybe I can get one from a friend of mine."

She says, "All right, come on out as soon as you can."

A little later we went to 8th and Weller. Lieutenant Hyde stayed on one side of the street and Mr. Bangs stayed behind a shed, and I followed Harry Mar to 727 28th Street South. He entered the house. After about 5 or 10 minutes he came

(Testimony of John H. Van Treel.)

out with Mrs. Lowery, who was carrying a dog, several hat boxes and clothes. They put it all into the back of the car and went back—went to Rainier Avenue, where the car stopped in front of the Rainier Veterinary Hospital. They were there ten or fifteen minutes. They came out of the hospital, re-entered the car, went to 8th and Weller. Mar parked the car and left and crossed the street and went behind the shed. Mrs. Lowery got out of the car. Mar was gone not over two or three minutes. When he came back they both got in the car. Harry Mar gave the signal that he was going to drive away from the curb and proceeded down Weller, and I stopped him about half a block down Weller by turning the car in front of him. By that time Lieutenant Hyde was already on the other side of the car, and I got out where Harry Mar was on the driver's side and stopped anything they would throw out or conceal. Hyde opened the door and I had Mar out of the car and had taken him around to the right side of the car, and at that time Lieutenant Lyde had picked up a jar of opium between the seat and the door. That is Exhibit 3. We came to the Federal Building where I searched her pocket book. She said, "I want to get some things out of there." I said, "All right, you can get certain things out when I am through looking at them." I found Exhibit 4 in her pocket book. It is opium prepared for smoking, mixed with yen shee dross. They are in the form of pills. Yen shee is the residue of opium after smoking. It would take

(Testimony of John H. Van Treel.)

quite a while to roll or prepare a pill like this. I have had Mabel Lowery under [16] observation since May. She took several trips to Vancouver, B. C. She took one to Los Angeles and several trips to Wallace, Idaho.

Cross Examination

I base my statements about her trips to Vancouver, B. C., and Los Angeles upon personal knowledge. I did not see her in Vancouver. I checked the Air Line Manifest when she left as a passenger bound for Vancouver. I did not see her take the plane. She made a statement to Mrs. Hogan that she made two trips to Los Angeles. I know about the trips to Vancouver through the United States Custom Service.

Elizabeth Hogan was paid one reward check on the two cases of Mabel Lowery and Harry Mar. It was \$250.00. She is still working with us.

Mr. Bangs procured the car that we gave Mr. Mar to go to Mrs. Lowery's house. To the best of my recollection it was a government car from some other agency. I do not believe it was an F.B.I. car.

When we were in the Federal Narcotic Office I took Mabel Lowery into our laboratory room and she did use a towel there to wipe off some matter on her coat or dress she had on.

ELIZABETH HOGAN

called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

(This witness testified entirely as to the matters mentioned in counts 1 and 2, upon which the defendant was acquitted, and none of her testimony had any bearing as to counts 3, 4, and 5.)

Plaintiff rests.

Mr. Agnew: The Defendant, your Honor, challenges the evidence as to counts 1, 2 and 3, the sufficiency of it to go to the jury, and asks the court to decide as to those counts as a matter of law and dismiss the case as to those three counts.

No, I have my counts wrong. It is as to the last three instead of the first three. [17]

ARGUMENT

The Court: My attitude is not such that I would decline to give you further time to argue that contention, Mr. Agnew, if the situation should make it appropriate, but at this time I do not feel that the court should rule, as a matter of law, in favor of your motion on any count.

So, for that reason, as to each and all its parts, as to each and all the counts, is denied.

The Court does not rule that under a not guilty plea, defendant cannot prove entrapment, nor does the court now rule that defendant is not entitled, at the present stage, to an instruction on entrap-

ment if the case should be submitted without further evidence.

The Court merely is of the opinion that the present evidence and record do not require a ruling that, as a matter of law, defendant has been entrapped by Government officers or that for any other reason defendant is entitled to a directed verdict.

Mr. Agnew: I think possibly I should reserve an exception.

The Court: Exception allowed.

B. A. KADANER,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

I am a veterinary surgeon with offices at 815 Rainier Avenue. I recall a day in the later fall when the defendant came in with a Chinese. As I recall, she walked in first with the terrier, and the Chinese cab driver walked in, he looked at the large chart on the wall, and I diagnosed the case as one which could be easily treated, and I treated it in the front room, and I believe the Chinese cab driver helped hold the dog while I gave it the medicine. [18]

I didn't notice Mrs. Lowery's purse at the time or where she laid it. I can't answer that the Chinese was alone in the room with her purse at the time. I don't know for sure.

MABEL HELEN LOWERY,

called as a witness on her own behalf, being first duly sworn, testified as follows:

I own the lease and furniture of the Albany Hotel. I did not take any trips to Los Angeles between May and September; neither did I go to Vancouver, B. C. I was in Idaho and returned September 6th. I did not have any conversation with Harry Mar about purchasing opium on September 9th. I called the China Cab Company about 1:30. He answered the telephone and said, "There is only two cabs running today," and he said "they are very, very busy." He said "I am not working today," and I told him I had to go to town because *because* I had a dog and I had to get to the veterinary and that I had got a lot of bundles and things which I had to move. He said "Well, I might be working later on in the day, if one of the cabs comes back from the garage." I said "Well, I would certainly appreciate it if you can get a car and come out after me." He says, "Well, I will do my best."

I next heard from him between 3:30 and 4 o'clock in the afternoon. He asked me if I was still waiting and I said "Yes" and he said, "Well, I have borrowed a friend's car and I *will out* and get you." He talked like he was excited and I could not hear very well, the line wasn't real distinct because I had to keep saying, "What, What?" to him. He said nothing about gasoline rationing. [19]

He came out in about a half hour and we carried

(Testimony of Mabel Helen Lowery.)

my stuff out to the car. We went to the veterinary where I walked to the window, I laid my purse and my sun glasses down on this little counter, and came around with the dog in my arms and put it on the table. He came in at the same time I did. When I walked into the other room he was standing there looking at the pictures on the wall. I did not see him tamper with my purse. The doctor and I walked out into another room.

After we left the veterinary we drove to Dearborn Street. The dog was on my lap. I missed my sun glasses and I asked him to go back, but he kept on driving. He wouldn't go back. He said "Okeh, but do you have to have them?" I said, "Yes, I would. I would like to have them. I don't want to lose them," but he kept on going.

My little dog started to throw up and he said "Oh, gosh, don't let her throw up on this car. My friend will be angry if she throws up on the car." Then I got back in the back seat and got my dog back in my lap. I says, "well, then you had better stop," and he said, "Okeh, I will," and he stopped. I opened the door and put my dog on the ground and she ran up the street. I followed her. He got out of the car and I said "where are you going?" and he said, "Oh, around the corner. I will be right back." When I got back Mar was sitting in the car. His door was closed. I got in, still holding the dog. He had just started the motor and waited a little. He went like this with the wheel, and then Mr. Van Trell drove up along side of us.

(Testimony of Mabel Helen Lowery.)

He never gave me a jar. I never put anything in my purse. I was paying no attention to anything but the dog. I was trying to wipe it off with my handkerchief, and he said, "Don't let her get anything on my friend's car." I never saw the jar. Mr. Hyde said "Give me your pocketbook," so I handed him my purse. He looked in it and then handed it back to me. Later, when we got in the car, they put me in the back seat with [20] my dog. Mr. Van Trell said, "Did you find anything in her purse?" and Mr. Hyde said "No." So he says, "where is her pocket book?" and he says, "I gave it back to her." So then Mr. Van Treel turned to me and said, "Give me your purse, Mabel," so I handed him my pocket book. After he looked in my purse he handed it back to me and then he went to the car and then he came out with a jar. They took me back to the veterinary for my glasses. Later Mr. Bangs told Mr. Van Treel to stop at the lot. When he got out he said "I want to get out and see if there is any more back there." He went around back of this little shed, and pretty soon he came back and said, "No, there wasn't anything there." Then we went to the veterinary.

When they first took me to the Federal Court House Mr. Hyde took me off to the right in a smaller room, and set my pocket book down on the desk and told me to sit down. Then he went out of the room. When we were walking from the car I said "I have a couple of letters in my purse. I

(Testimony of Mabel Helen Lowery.)

wonder if I could have them.” “I don’t want them to read.” He said “No.”

Afterwards Mr. Van Treel was very nice to me. He gave me a towel and took me into a little wash room there and let me wash my shoulder of my jacket and my slacks off. That was after they found this in my purse. When Hyde gave the purse back there was nobody in the room for about five minutes, but I didn’t touch the purse. I did not know there was anything there.

Cross Examination

I have used the name May Marshall. I have been arrested several times. I would say four or five times. It would be more. I can’t say. I didn’t go to Vancouver last summer. I didn’t bring Duke Browning’s horses down. A trainer brought them down. The trainer went up after them. A friend sent him. I was in Idaho then. I didn’t go to Los Angeles. I went over to Wallace, Idaho, the first of June and came back maybe in July. Then I probably came back in August, and then I came back [21] up in September, and I haven’t been back since.

Harry Mar called me up on September 9th and I said “yes.” He said “Well, I don’t know if I can come out and get you or not, but I am going to try. I have got a friend’s car.” And I said, “Well. I sure wish you would,” and I kept having to ask him over again, because the line was so indistinct. I did not say that I wanted it and needed it. He

(Testimony of Mabel Helen Lowery.)

might have said "I have got it," referring to the car.

I left my purse alone in the office of the doctor. I had about \$132 or \$133. None of it was for the purchase of this opium. I usually carry that much money with me. There was nobody in the doctor's office but Harry Mar, the doctor and myself, so I left my purse there. The doctor and I walked into the back room and I stood at the screen door looking out into the back yard, while the doctor was preparing the medicine, and when we walked back in there, Harry Mar had come from the reception room. The dog was in my arms.

I asked Harry Mar to stop the car just before we came to 8th and Weller. I had asked him about a block or two ahead to stop. The car had not moved away from the curb when the officers made the arrest. At the time I thought it might be down a block or two, but afterwards I have been back and looked there. I had never seen this jar at any time prior to my arrest. It was never in my purse. I did not ask for my powder puff, just the letters. Mr. Hyde did leave me alone with my purse.

I have smoked opium on 28th Avenue. I have never at the Albany Hotel.

Defendant rests.

Rebuttal

A. M. BANGS

recalled as a witness in Rebuttal, testified as follows: [22]

When we drove the defendant Lowery back to the veterinary's we did not stop at 8th and Weller.

GEORGE S. HYDE

recalled as a witness in rebuttal, testified as follows:

Mrs. Lowery was not left alone with her purse at any time. When we drove Mrs. Lowery back to the Veterinary's for her glasses we did not drive by 8th and Weller or stop there.

Witness excused.

Government rests.

Mr. Agnew: Pardon me, your Honor. I neglected to make the formal motions that I made at the end of the Plaintiff's case, and I think that I should protect the record. I am sorry. I would like to make them now, and if your Honor will have the same ruling in mind——

The Court: The Court has the same ruling in mind, and the motions are deemed to have been made at the close of all the evidence, denied, and exception noted and allowed.

Mr. Agnew: Yes, your Honor.

(Whereupon, counsel made their arguments

to the Jury, the Court instructed the jury, whereupon the jury retired to consider their verdict.)

Received a copy of the within Bill of Exceptions this 16th day of Feb., 1945.

J. CHARLES DENNIS

Attorney for U. S.

The foregoing constitutes a full, true and complete Bill of Exceptions insofar as the matters on appeal are concerned and we hereby consent that the trial judge may certify the same as a sufficient Bill of Exceptions in this case.

ALLAN POMEROY

Atty. for Plaintiff

JOHN T. POMEROY

Atty. for Deft. [23]

United States of America

State of Washington

County of King—ss.

I, John C. Bowen, Judge of the United States District Court for the Western District of Washington, Northern Division, and the Judge before whom this cause was tried, do hereby certify:

That the within and foregoing Bill of Exceptions contains all the testimony produced by the Government concerning Counts 3, 4, and 5 of the indictment.

I do further certify that the foregoing Bill of Exceptions, together with the exhibits referred to therein, to wit: Exhibits 1 to 5 inclusive, and the Clerk's record herein constitute all the material

facts, matters and proceedings concerning Counts 3, 4 and 5, and do further constitute all the material facts, matters and proceedings concerning the Assignment of Error filed by Appellant in this cause.

The Clerk of the Court is hereby directed to transmit, and as a part of said Bill of Exceptions Exhibits 1 to 5 inclusive.

Proper notice having been given, I have signed this certificate this 19th day of February, 1945.

JOHN C. BOWEN

Judge

Certificate and Bill of Exceptions Presented by

JOHN F. MATTHEW

Of Attorneys for Defendant

Bill of Exceptions examined and approved:

ALLAN POMEROY

Assistant United States District Attorney.

[Endorsed: Filed Feb. 19, 1945.]

[Title of District Court and Cause.]

ASSIGNMENT OF ERROR

Comes now the defendant (appellant) and makes the following assignment of error:

I: The court erred in denying the challenge to the sufficiency of the evidence and motion for a directed verdict made at the conclusion of the government's case, and at the end of all evidence as to

counts 3, 4, and 5. (Bill of Exceptions pages 18 and 23.)

HENRY CLAY AGNEW

Attorney for Defendant

(Appellant)

Receiver a copy of the within Assignments of Error this 16th day of Feb., 1945.

J. CHARLES DENNIS

Attorney for U. S.

[Endorsed]: Filed Feb. 19, 1945.

[Endorsed]: No. 10965. United States Circuit Court of Appeals for the Ninth Circuit. Mabel Helen Lowery, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed March 2, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10965

MABEL HELEN LOWERY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

Comes now the appellant and adopts the assignment of error as a statement of the points to be relied upon on appeal.

Appellant further hereby designates the entire certified transcript for printing.

HENRY CLAY AGNEW

Attorney for Appellant

[Endorsed]: Filed March 12, 1945. Paul P. O'Brien, Clerk.

